

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY SEOUL

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E.O. 11652: GDS

TAGS: PFOR, KSUS

SUBJECT: OGLE DEPORTATION

1. FOLLOWING ARE LEGAL TALKING POINTS USED BY COUNTRY
DIRECTOR IN DISCUSSION WITH ROK EMBASSY POLCOUNS
CONCERNING DETENTION OF OGLE AT TOKYO AIRPORT:

-- IRRESPECTIVE OF THE INTERNATIONAL LAW PERTAINING TO
POWERS OF SHIP CAPTAINS (WHICH WE DOUBT WOULD JUSTIFY THIS
DETENTION), AIRLINE PILOTS DO NOT HAVE ANALAGOUS POWERS
UNLESS SO GRANTED BY INTERNATIONAL CONVENTION.

-- THE TOKYO CONVENTION GRANTS SOME POWERS TO PILOTS
OVER THEIR PASSENGERS, BUT THIS LIMITED JURISDICTION CEASES
IN ANY EVENT WHEN THE AIRLINE'S DOORS ARE OPENED ON THE
TERRITORY OF ANOTHER STATE.

-- AT THE POINT THOSE DOORS OPENED, THE AUTHORITY OF
THE PILOT WAS LIMITED TO TURNING REV. OGLE OVER TO JAPANESE
AUTHORITIES IF THE PILOT REASONABLY BELIEVED OGLE HAD
COMMITTED ACTS ON BOARD THE AIRLINE WHILE IN FLIGHT WHICH
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JEOPARDIZED THE SAFETY OR GOOD ORDER OF THE PLANE.

-- WHILE KOREA ACTED PROPERLY IN PROVIDING TRANS-
PORTATION FOR OGLE TO THE UNITED STATES, OGLE'S ACTIVITIES

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WHILE IN TRANSIT AT THE TOKYO AIRPORT WERE UNDER THE
JURISDICTION OF THE GOVERNMENT OF JAPAN. IF OGLE HAD LEFT
THE PLANE AND ATTEMPTED TO REMAIN IN JAPAN, JAPANESE
AUTHORITIES WOULD HAVE HAD THE POWER TO PERMIT HIM TO
REMAIN OR EXPEL HIM.

-- IN EXTRADITION CASES (IF PROVIDED BY TREATY OR
TRANSIT STATE LAW), THE EXTRADITING STATE CAN MAINTAIN
CUSTODY OF THE EXTRADITED PERSON AT TRANSIT STOPS, BUT
THE CONSENT OF THE TRANSITED STATE MUST BE OBTAINED.
FURTHERMORE, EXTRADITION, WHICH INVOLVES TAKING CUSTODY
BY INTERNATIONAL AGREEMENT IN ORDER TO BRING AN INDIVIDUAL
WITHIN THE NATIONAL JURISDICTION, MUST BE DISTINGUISHED
FROM DEPORTATION, WHICH INVOLVES EXPELLING AN ALIEN FROM
THE NATIONAL JURISDICTION.

2. ABOVE POINTS SHOULD BE QUALIFIED BY NOTING THAT BY
INTERNATIONAL CUSTOM AN AIRLINE COULD TAKE NON-DISCRIMINA-
TORY MEASURES IN TERRITORY OF ANOTHER STATE FOR SAFETY
AND CONVENIENCE OF AIRLINE, E.G., REQUIRING ALL PASSENGERS
TO REMAIN ON BOARD AT TRANSIT POINT, REQUIRING SECURITY
CHECK PRIOR TO ENTRY ON PLANE OR REQUIRING NECESSARY
TRAVEL DOCUMENTS OF ALL PASSENGERS FOR THEIR POINT OF
ULTIMATE DESTINATION. DISCRIMINATORY ASPECT DISTINGUISHES
OGLE CASE FROM THE ABOVE EXAMPLES. KISSINGER

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